INDEX

	Page
Petition for a writ of certiorari	1
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	2
Statement of the case	2
Specification of errors to be urged	7
Reasons for granting the writ	8
Conclusion	11

CITATIONS

CASES:

Commissioner v. *Culbertson*, 337 U.S. 733	7, 8, 9 passim
Commissioner v. *Tower*, 327 U.S. 280	8, 9
Ford, Clarence B., 19T. (200)	10
Forman v. *Commissioner*, 199 F. 2d 881	9
Levin v. *Commissioner*, 199 F. 2d 692	9
Lusthaus v. *Commissioner*, 327 U.S. 293	8
Marcus v. *Commissioner*, 201 F. 2d 850	10
Tomlinson v. *Commissioner*, 199 F. 2d 674	9
Turner v. *Commissioner*, 199 F. 2d 913	9

STATUTES:

Internal Revenue Code, Section 182(c)	2
Revenue Act of 1951	9

MISCELLANEOUS:

Senate Finance Committee Report, Sen. Rpt. 781, 82nd Cong., 1st Sess.	9

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IN THE

Supreme Court of the United States

October Term, 1953

No.

LESTER MAXWELL, *Petitioner*,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

The petitioner, Lester Maxwell, prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above entitled cause on April 10, 1953.

OPINIONS BELOW

The memorandum opinion of the Tax Court of the United States (R. 13-24) is not reported. The opinion of the Court of Appeals (R. 33) is reported at 203 F. 2d 567.

JURISDICTION

The judgment of the Court of Appeals was entered on April 10, 1953 (R. 33). The jurisdiction of this Court is involved under Title 28, United States Code, Section 1254(1).

QUESTIONS PRESENTED

1. Whether the Court below erred in affirming the Tax Court's decision that petitioner's wife was not a bona fide member for federal income tax purposes of a partnership conducted under the name of Lester Maxwell Furniture Company?

2. Whether the Court below erred in affirming the Tax Court's holding that petitioner's wife made no capital contribution to the partnership?

STATUTE INVOLVED

The statute involved is Section 182(c) of the Internal Revenue Code (26 U. S. C. § 182(c)) which provides in part as follows:

> SEC. 182 TAX OF PARTNERS.
>
> In computing the net income of each partner, he shall include, whether or not distribution is made to him—
>
> * * * * * * * * *
>
> (c) His distributive share of the ordinary net income or the ordinary net loss of the partnership.

STATEMENT OF THE CASE

Petitioner is an individual residing at Knoxville, Tennessee, and filed his income tax returns for the years here involved with the collector of internal revenue for the district of Tennessee (R. 13-14).

During the period 1919 to January 1, 1944, petitioner conducted a retail furniture business in Knoxville, Tennessee, as a sole proprietorship. In 1929 he engaged his

brother-in-law, Fred H. Human, to assist him in the business. In 1939 and at various times thereafter, Human approached petitioner with respect to securing an interest in the business. In 1940 Marian M. Calloway, daughter of petitioner, and her husband, Hasson Calloway, urged petitioner to sell them an interest in the business. (R. 14.)

In the latter part of 1943 petitioner decided to form a partnership with Fred H. Human, Marian M. Calloway and Hasson Calloway (R. 14). Under date of January 1, 1944 a partnership agreement was executed, reading as follows (R. 14-15):

Articles of Partnership

This partnership shall be known as the Lester Maxwell Furniture Company.

The Partnership is composed of Lester Maxwell, who owns a 50 per cent interest therein, Fred H. Human, who owns a 25 per cent interest therein, Hasson Calloway, who owns a 12-½ per cent interest therein, and Marian Maxwell Calloway, who owns a 12-½ per cent interest therein.

Said partnership shall engage in the retail furniture business in the City of Knoxville, and shall be under the management of Lester Maxwell.

Said partnership shall pay Lester Maxwell a salary for his services and Fred H. Human a salary for his services, so long as said partners continue to devote their time to the business; said salaries to be considered a business expense. After the payment of expenses and salaries set out above, the net profits, if any, shall belong to the partners in the ratio of their interests in said partnership. The salaries of the above partners shall be fixed by agreement of the majority of the partnership, each partner having a vote in the (sic) accordance with the percentage of his interest in the firm. That is, Lester Maxwell shall have 50 votes, Fred H. Human shall have 25 votes, Hasson Calloway 12-½ votes, and Marian Maxwell 12-½ votes.

In the event either partner desires to withdraw, the other partners shall have the first chance to buy his

interest in the partnership at its book value. In the event of the death of either partner, his or her estate shall be bound to give the surviving partners the opportunity to purchase the interest of said deceased partner at its book value before offering said interest to any outsider.

Executed at Knoxville, Tennessee, on this 1st day of January, 1944.

(Sgd.) LESTER MAXWELL
(Sgd.) FRED H. HUMAN
(Sgd.) HASSON CALLOWAY
(Sgd.) MARIAN M. CALLOWAY

Fred H. Human paid for his interest in the partnership by giving petitioner $4,000 in cash and a note for $14,015.26. Hasson Calloway and Marian Calloway, in payment of their interests, each gave petitioner $2,000 in cash and an interest-bearing promissory note for $7,007.63. (R. 16.)

The $4,000 cash which the Calloways paid in was secured from the Hamilton National Bank of Knoxville on an unsecured note. The note was not endorsed by petitioner. The Calloways later paid the note to the bank and the two notes for $7,007.63 each, in installments. (R. 16.)

Sometime after the formation of this partnership Delphia E. Maxwell, the wife of petitioner, felt she should have an interest in it (R. 17). She approached petitioner and asked him to sell her an interest in the business (R. 3, 5, 10, 22),[1] and with the consent of the other partners, in the later part of 1944 petitioner sold her one half of his then interest for the sum of $22,383.61 (R. 17). Delphia E. Maxwell at this time owned two houses in her own right on which she received rents (R. 10).[2] She executed and delivered to petitioner a non-interest bearing note dated January 1, 1945, and payable in 12 months for the full purchase price of her partnership interest (Ex. 10-J, 16; R. 3, 17). Delphia E.

[1] The Tax Court did not find this fact; however, it is supported by the record (citations above), and the Tax Court's opinion wherein it states that she "urged" petitioner to sell her an interest.

[2] This finding was not made by the Tax Court; however, it is clearly supported by the record (citations above).

Maxwell had made (at the time of the trial of this proceeding in the Tax Court) payments totaling $13,500 on the aforesaid note as follows (R. 4, 17):

3- 6-45	$3,000	9-17-47	$1,500
1-16-46	3,000	9-15-48	1,000
6-10-47	1,500	2-24-49	1,000
8-11-47	1,500	1- 3-50	1,000

Delphia E. Maxwell testified that she intended to become a partner in the partnership and the other partners testified that they intended that she become a partner (R. 2, 5, 7, 11; Tr. 93).[3]

Her admission to the partnership was evidenced by the execution on January 1, 1945, by all of the partners of "Amended Articles of Partnership", reading as follows (R. 18):

> AMENDED ARTICLES OF PARTNERSHIP
>
> FOR THE
>
> LESTER MAXWELL FURNITURE COMPANY
>
> WITNESSETH:
>
> That Lester Maxwell, with the consent of the other members of said partnership, has sold to Delphia Maxwell one-half of his interest in this partnership, and that hereafter said partnership shall be composed of the following persons, who have the following shares in said partnership:
>
> | | |
> |---|---|
> | Lester Maxwell | 25 percent |
> | Delphia Maxwell | 25 percent |
> | Fred H. Human | 25 percent |
> | Marian Calloway | 12½ percent |
> | Hasson Calloway | 12½ percent |
>
> The operation of said partnership shall continue as in the past and as operated under partnership agreement dated January 1, 1944, except that in all matters as to salary, operation, and control, the question shall

[3] While the Tax Court did not find these facts, they are facts of record (R. 2, 5, 7, 11; Tr. 93).

be settled by a vote of the members of the partnership as the same is now constituted. That is to say, Lester Maxwell, Delphia Maxwell and Fred H. Human shall have twenty-five votes each and Marian M. Calloway and Hasson Calloway shall have twelve and one-half votes each. All of the other terms of said former partnership are hereby made a part of this agreement.

This January 1, 1945.

(Sgd.) Lester Maxwell
(Sgd.) Fred H. Human
(Sgd.) Delphia H. Maxwell
(Sgd.) Marian M. Calloway
(Sgd.) Hasson Calloway

The formation of the original partnership and the subsequent admission of Delphia E. Maxwell as a partner were made known to those persons and concerns who would be interested in the form of the business—such as Dun and Bradstreet, their bank, their insurance company, and their employees (R. 7-12, 17).[4] Partnership returns were filed for the fiscal years ended September 30, 1944 to 1947, inclusive, which listed Delphia E. Maxwell as one of the partners (Exs. 6-F through 8-H; R. 18).

Petitioner and Fred H. Human were the only partners who performed services for the partnership and they were paid for their services (R. 18-19). Under the original and amended agreements, each of the partners had the right to control his or her share of the income, and during the taxable years involved each of the partners withdrew substantially all of their respective shares. The partners devoted such earnings to their own independent use. (R. 5, 6, 11, 14-15, 18, 19.)[5]

---

[4] It is not clear, but it appears that the Tax Court found these facts only insofar as they applied to the original partnership (R. 17); however, the record shows clearly that they applied equally to the introduction of Delphia E. Maxwell as a member of the partnership (R. 7-12, 17).

[5] The Tax Court found only that the "Calloways" devoted such earnings to their own independent use (R. 19); however, the record clearly supports the same findings with respect to all the partners including Delphia E. Maxwell (R. 5, 6, 11).

The Commissioner of Internal Revenue recognized the fact that petitioner and Fred H. Human were bona fide members of the partnership conducted under the name of Lester Maxwell Furniture Company (R. 20). The Tax Court held that Marian and Hasson Calloway were bona fide members of the partnership (R. 20, 21), but refused to recognize that Delphia E. Maxwell was a member of said partnership (R. 20, 24) and held that the amounts credited to her account on the partnership books in accordance with the partnership agreement (substantially all of which she had withdrawn) were taxable to petitioner (R. 24). The Court of Appeals for the Sixth Circuit affirmed the Tax Court (R. 33).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In affirming the decision of the Tax Court which is contrary to the decision of this Court in *Commissioner* v. *Culbertson*, 337 U. S. 733.

2. In finding and holding that the Tax Court properly applied the applicable law in *Commissioner* v. *Culbertson*, 337 U. S. 733, when, in fact, the Tax Court, applied the so-called "original capital" or "vital services" tests which had been discredited as a cure-all in the *Culbertson* case.

3. In affirming the decision of the Tax Court which held that Delphia E. Maxwell did not contribute capital to the partnership conducted under the name of Lester Maxwell Furniture Company, when she purchased from petitioner one-half of his existing interest in said partnership and owned that interest and left it in the partnership.

4. In failing to find and hold that Delphia E. Maxwell, the wife of the petitioner, should be recognized for federal income tax purposes as a partner in the Lester Maxwell Furniture Company.

REASONS FOR GRANTING THE WRIT

1. The decision of the Tax Court, affirmed by the Court of Appeals, is in direct conflict with the decision of this Court in *Commissioner* v. *Culbertson*, 337 U.S. 733. Prior to this Court's decision in the *Culbertson* case, the Tax Court's determination of partnership questions was based on so-called "objective tests" which resulted from misinterpretation of this Court's decisions in *Commissioner* v. *Tower*, 327 U. S. 280, and *Lusthaus* v. *Commissioner*, 327 U. S. 293.

In the *Culbertson* case, decided June 27, 1949, this Court held that the true test of the validity of a partnership for federal income tax purposes is one of "intent" and in the opinion stated the rule in part as follows:

> The question is not whether the services or capital contributed by a partner are of sufficient importance to meet some objective standard supposedly established by the *Tower* case, but whether, considering all the facts—the agreement, the conduct of the parties in execution of its provisions, their statements, the testimony of disinterested persons, the relationship of the parties, their respective abilities and capital contributions, the actual control of income and the purpose for which it is used, and any other facts throwing light on the true intent—the parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise.

In disregard of this Court's pronouncements, the Tax Court, while citing the *Culbertson* case and referring to "intent", "business purpose", and "economic status" in its decisions in partnership cases, persisted in its adherence to the objective tests which this Court repudiated in the *Culbertson* case.

That the Tax Court, after the *Culbertson* case, still persisted in its erroneous interpretation of partnerships is clear from the following observation of Chief Judge

Hutcheson of the United States Court of Appeals for the Fifth Circuit in *Tomlinson* v. *Commissioner*, 199 F. 2d 674:

> This is another of the long list of partnership tax cases in which the Tax Court, with a die-hard persistence in clinging to the objective tests laid down in *Commissioner* v. *Tower*, 327 U.S. 280, has * * * found for the Commissioner undisputed facts which under the rule of *Commissioner* v. *Culbertson*, 337 U.S. 733, require a contrary conclusion.

See also *Turner* v. *Commissioner*, (5th C.C.A.), 199 F. 2d 913, *Levin* v. *Commissioner*, (2nd C.C.A.), 199 F. 2d 692, and *Forman* v. *Commissioner*, (9th C.C.A.), 199 F. 2d 881.

This attitude of the Tax Court apparently was the motivation behind Section 340 of the Revenue Act of 1951. The Senate Finance Committee Report on the section, Sen. Rpt. 781, 82nd Cong., 1st Sess., reads in part as follows (p. 39):

> However, the frequency with which the Tax Court, since the *Culbertson* decision, has held invalid family partnerships based upon donations of capital, would seem to indicate that, although the opinions often refer to "intention", "business purpose," "reality," and "control." they have in practical effect reached results which suggest that an intrafamily gift of a partnership interest, where the donee performs no substantial services, will not usually be the basis of a valid partnership for tax purposes. * * *

It is clear from the facts of record and the Tax Court's opinion that in deciding the case of this petitioner the Tax Court, while giving lip service to the *Culbertson* decision, did not decide the case upon the substantial evidence of the intention of the parties, but on the basis of certain tests. On the facts in this case the Tax Court held that—

> The partnership capital was not increased by such transaction. No contribution of *independent* capital originating with Delphia E. Maxwell resulted from the

> note transaction. She concedes that she performed no services for the partnership, nor is there any evidence that she at any time participated in the management of policy making. (Italic supplied.)
>
> • • • • • • • • • •
>
> We have recognized all of the partners to be bona fide members of the partnership except Delphia E. Maxwell. She never contributed capital or services to the partnership.

Thus, the Tax Court, as it did in the *Culbertson* case, treated as essential to membership in a family partnership for tax purpose, the contribution of either "vital services" or "original capital." This made decisive what are only "circumstances" to be taken into consideration.

The orderly administration of the tax laws is dependent upon faithful adherence by the lower courts to the authoritative rulings of this Court. Once a question has been resolved by this Court, the failure of any of the lower courts to abide by the result not only produces inequalities of treatment among taxpayers but engenders disrespect for the authority of this Court.

Since the Tax Court decided this case, it has accepted the ruling of this Court in the *Culbertson* case. Cf. *Marcus* v. *Commissioner*, (5th C.C.A.), 201 F. 2d 850, and *Clarence B. Ford*, 19 T.C. 200. However, this fact does not alleviate the necessity for the correction of the lower courts departure from said ruling in this case.

2. The decision of the court below, affirming the Tax Court's holding that Delphia E. Maxwell was not a bona fide partner in the partnership, is contrary to the evidence. The credibility of the witnesses is not involved. The testimony of the various witnesses[6] corroborated each other and the uncontradicted testimony of all of the partners was that they intended to be partners. Other facts of record show

[6] Ten witnesses appeared for the petitioner—all five partners, a competitor, an employee, a representative of Dun and Bradstreet and representatives of the partnership's insurance company and bank. The witnesses were placed under the rule.

the truthfulness of their assertions. The Court's holding that Delphia E. Maxwell contributed no capital to the partnership is based on the erroneous theory that "buying an existing partnership interest" does not make the purchaser a partner.

The testimony and the exhibits establish the agreement. The decision of the lower Court is wrong as a matter of law as well as fact and should be reversed.

CONCLUSION

It is therefore respectfully submitted that this petition for a writ of certiorari should be granted.

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July 9, 1953.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute and Regulations involved	2
Statement	2
Argument	6
Conclusion	9
Appendix	10

CITATIONS

Cases:

Anderson v. *Commissioner*, 185 F. 2d 1021, certiorari denied, 341 U.S. 935	9
Batman v. *Commissioner*, 189 F. 2d 107, certiorari denied, 342 U.S. 877	9
Commissioner v. *Culbertson*, 337 U.S. 733	6, 7
Harkness v. *Commissioner*, 193 F. 2d 655, certiorari denied, 343 U.S. 945	9

Statutes:

Internal Revenue Code:

Sec. 11 (26 U.S.C. 1946 ed., Sec. 11)	10
Sec. 22 (26 U.S.C. 1946 ed., Sec. 22)	10
Sec. 181 (26 U.S.C. 1946 ed., Sec. 181)	10
Sec. 182 (26 U.S.C. 1946 ed., Sec. 182)	10
Sec. 3797 (26 U.S.C. 1946 ed., Sec. 3797)	11

Miscellaneous:

Treasury Regulations 111, Sec. 29.22(a)-1	11

QUESTION PRESENTED

Whether the Court of Appeals correctly affirmed the Tax Court's determination that Delphia E. Maxwell did not intend to carry on business as a partner in the partnership conducted under the name of Lester Maxwell Furniture Company during the taxable years 1945 through 1947, and, therefore, that the share of the business income attributed to her as a partner during these years was includible in taxpayer's gross income as defined in Section 22(a) of the Internal Revenue Code.

STATUTE AND REGULATIONS INVOLVED

The pertinent parts of the statute and Regulations are set forth in the Appendix, *infra*, pp. 10-12.

STATEMENT

The facts as stipulated and found by the Tax Court (R. 13a-20a) may be summarized as follows:

The taxpayer, Lester Maxwell, and his wife, Delphia E. Maxwell, are residents of Knoxville, Tennessee. (R. 13a.)

From 1919 to January 1, 1944, the taxpayer conducted a retail furniture business in Knoxville as a sole proprietorship. In 1929, he engaged his brother-in-law, Fred H. Human, to assist him in the business. In 1939 and various times thereafter, Human approached the taxpayer with respect to securing an interest in the business. In 1940, Marian M. Calloway, daughter of the taxpayer, and her husband, Hasson Calloway, urged her father to sell them an interest in the business. At the time, taxpayer was changing his business from a

secondary to a primary location, and he postponed making a decision about taking others into the business. (R. 14a.)

In the latter part of 1943, taxpayer decided to form a partnership with Human, Marian M. Calloway, and Hasson Calloway. Accordingly, a partnership agreement was executed on January 1, 1944, setting forth the following interest (R. 14a-15a):

Lester Maxwell	50 per cent
Fred H. Human	25 per cent
Hasson Calloway	12½ per cent
Marian Maxwell Calloway	12½ per cent

Human paid for his interest in the partnership by giving the taxpayer $4,000 in cash and a note for $14,015.26. Hasson Calloway and Marian M. Calloway each gave the taxpayer $2,000 in cash and an interest-bearing promissory note for $7,007.63 in payment for their interests. (R. 16a.)

The $4,000 in cash which the Calloways paid was obtained from the Hamilton National Bank of Knoxville on an unsecured note. The note was not endorsed by the taxpayer. The Calloways later paid the note to the bank and the two notes for $7,007.63 each, in installments. The last payment on the promissory notes given to the taxpayer was made on May 30, 1946. (R. 16a.)

Sometime after the formation of this partnership, Delphia E. Maxwell felt that she should have an interest in it and urged the taxpayer to sell her an interest. In the latter part of 1944, with the

consent of the other partners, the taxpayer sold her one-half of his then interest for the sum of $22,383.61. Delphia executed and delivered to the taxpayer a non-interest-bearing note, dated January 1, 1945, and payable in twelve months. On the back of the note are endorsements of payments totaling $12,000 as follows (R. 17a):

3/6/45	$3,000	9/15/48	$1,000
1/16/47	3,000	2/23/49	1,000
6/10/47	1,500	1/3/50	1,000
9/17/47	1,500		

Cancelled checks drawn by Delphia E. Maxwell and payable to Lester Maxwell show payments totaling $10,500 as follows (R. 17a):

1/16/46	$3,000	9/15/48	$1,000
6/10/47	1,500	2/24/49	1,000
8/11/47	1,500	1/3/50	1,000
9/17/47	1,500		

No explanation was offered with respect to the discrepancy in certain amounts and dates between the payments endorsed on the notes and the payments made by check. (R. 17a.)

An amendment to the "Articles of Partnership" was executed by the alleged partners on January 1, 1945, reflecting a reduction in Lester Maxwell's partnership interest to 25 per cent and Delphia Maxwell's acquisition of a 25 per cent interest. (R. 17a-18a.)

During the taxable period involved, no services were performed for the partnership by Delphia E.

Maxwell, Marian M. Calloway, or Hasson Calloway. Partnership returns were filed for the fiscal years ended September 30, 1944, to 1947, inclusive. (R. 18a.)

After deducting the partnership salaries paid to Lester Maxwell and Fred H. Human, as provided for under the terms of the partnership agreement dated January 1, 1944 (R. 15a), the amounts distributed to the members of the partnership during the taxable periods involved were as follows (R. 19a):

Distribution for Taxable Periods ended September 30.

Partner	*1944*	*1945*	*1946*	*1947*
Lester Maxwell	$24,949.56	$25,912.77	$21,521.04	$14,148.12
Delphia E. Maxwell		14,171.23	21,521.04	14,148.12
Fred H. Human	12,474.78	20,042.00	21,521.04	14,148.12
Hasson Calloway	6,237.39	10,021.00	10,760.52	7,074.07
Marian M. Calloway	6,237.39	10,021.00	10,760.52	7,074.06
Totals	$49,899.12	$80,168.00	$86,084.16	$56,592.49

Under the original and amended agreements, each of the partners had the right to control their respective shares of the income and during the taxable years involved each of the alleged partners withdrew all of their respective shares. The Calloways devoted such earning to their own independent use. (R. 19a.)

The Commissioner recognized that Lester Maxwell and Fred H. Human intended to carry on busi-

In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 170

LESTER MAXWELL, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum findings of fact and opinion of the Tax Court (R. 13a-24a) are not reported. The opinion of the Court of Appeals (R. 33) is reported at 203 F. 2d 567.

JURISDICTION

The judgment of the Court of Appeals was entered on April 10, 1953. (R. 33.) The petition for a writ of certiorari was filed on July 9, 1953. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

ness as bona fide partners. However, the Commissioner determined that Marian M. Calloway, Hasson Calloway, and Delphia E. Maxwell were not bona fide partners for federal income tax purposes for the years 1945 through 1947, and that their shares of the partnership income were taxable to the taxpayer, and computed deficiencies accordingly. (R. 19a.)

The Tax Court, on the basis of all the evidence, found that all of the parties excepting Delphia E. Maxwell intended to join together in conducting the business as partners during the years in question. As for Delphia E. Maxwell, the Tax Court found that she was not a bona fide partner from 1945 through 1947 and, as to her, sustained the Commissioner's determination. The taxpayer appealed and the Court of Appeals affirmed. (R. 20a, 33.)

ARGUMENT

This case does not warrant further review. Contrary to the assertion of the taxpayer (Pet. 7), the decision of the Tax Court as affirmed by the Court of Appeals is not in conflict with this Court's decision in *Commissioner* v. *Culbertson,* 337 U. S. 733, and is clearly correct.

Taxpayer's contention that the Tax Court's decision is in conflict with that of this Court in *Commissioner* v. *Culbertson, supra,* rests on the premise that the Tax Court committed the same error in emphasis which was involved in the *Culbertson* case, *supra.* As he urged to the Court of Appeals, taxpayer maintains (Pet. 9) that the Tax Court

merely paid "lip service" to the *Culbertson* decision while considering the contribution of either "vital services" or "original capital" as essential to membership in a family partnership for tax purposes. It is, however, perfectly clear upon reviewing the findings of the Tax Court and reading its opinion as a whole that it addressed itself to the critical question (337 U.S. at 742) of whether "considering all the facts * * * the parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise." While in his petition (pp. 9-10) taxpayer points to isolated portions of the Tax Court's opinion as indicating a misapplication of *Culbertson, supra,* a reading of that language in its context refutes his contention. The Tax Court commenced its discussion as to whether Delphia E. Maxwell was a partner for tax purposes by stating the issue as being whether "Delphia E. Maxwell, wife of Lester Maxwell, was a bona fide partner during the taxable years 1945 to 1947, inclusive." (R. 22a.) It then touched on the various guides furnished by this Court in *Commissioner* v. *Culbertson,* 337 U.S. at 742), to the determination of their true intentions. These included: the circumstances relative to her purchasing an interest in the partnership;* her failure to contribute services; the lack of evidence as to her ever having partici-

* There is no basis in the Tax Court's findings of fact or opinion for the taxpayer's statement that the court held that Delphia E. Maxwell did not contribute capital to the partnership on the theory that buying an existing partnership interest does not make the purchaser a partner. (Pet. 11.) Re-

pated in the management or policy-making of the business; the fact that her testimony did not deny the implication that the income she received was used for the benefit of herself and the taxpayer; and the fact that the record is silent as to any business purpose having been served by her admission to the partnership. (R. 22a-23a.) In summation, the Tax Court said (R. 23a) that "Giving due consideration to all the relevant factors throwing light upon the true intention of the parties, * * *" it found that taxpayer's wife Delphia was not a "bona fide partner, for Federal tax purposes, in the partnership business conducted under the name of Lester Maxwell Furniture Company." Read in its entirety, the Tax Court's opinion contains no indication that, as the taxpayer contends (Pet. 8), it based its decision "on so-called 'objective tests' which resulted from misinterpretation of this Court's decisions in *Commissioner* v. *Tower,* 327 U.S. 280, and *Lusthaus* v. *Commissioner,* 327 U.S. 293."

Moreover, there is no more occasion for further review of this case than of other family partnership cases in which the Courts of Appeals have concurred in the Tax Court's findings of fact that the parties did not intend to carry on business as part-

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ferring to the fact that Delphia had given the taxpayer her note in exchange for one half of his then partnership interest, the Tax Court said (R. 23a):

> The partnership capital was not increased by such transaction. No contribution of independent capital originating with Delphia E. Maxwell resulted from the note transaction. * * *

ners during the taxable year, and in which this Court has denied certiorari. See e.g., *Anderson* v. *Commissioner,* 185 F. 2d 1021 (C.A. 2d), certiorari denied, 341 U.S. 935; *Batman* v. *Commissioner,* 189 F. 2d 107 (C.A. 5th), certiorari denied, 342 U.S. 877; cf. *Harkness* v. *Commissioner,* 193 F. 2d 655 (C.A. 9th), certiorari denied, 343 U.S. 945.

CONCLUSION

The decision below is correct and there is no occasion for further review. The petition for a writ of certiorari should be denied.

Respectfully submitted,

ROBERT L. STERN,
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Assistant Attorney General.
ELLIS N. SLACK,
DUDLEY J. GODFREY, JR.,
Special Assistants to the Attorney General.

AUGUST, 1953.

APPENDIX

Internal Revenue Code:

Sec. 11. NORMAL TAX ON INDIVIDUALS.

There shall be levied, collected, and paid for each taxable year upon the net income of every individual a * * * tax * * *.

(26 U.S.C. 1946 ed., Sec. 11.)

Sec. 22. GROSS INCOME.

(a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *

(26 U.S.C. 1946 ed., Sec. 22.)

Sec. 181. PARTNERSHIP NOT TAXABLE.

Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity.

(26 U.S.C. 1946 ed., Sec. 181.)

Sec. 182. TAX OF PARTNERS.

In computing the net income of each partner, he shall include, whether or not distribution is made to him—

* * * * *

(c) His distributive share of the ordinary net income or the ordinary net loss of the partnership, computed as provided in section 183(b).

(26 U.S.C. 1946 ed., Sec. 182.)

Sec. 3797. DEFINITIONS.

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

* * * * *

(2) *Partnership and Partner.*—The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

* * * * *

(26 U.S.C. 1946 ed., Sec. 3797.)

Treasury Regulations 111, promulgated under the Internal Revenue Code:

Sec. 29.22(a)-1. *What included in gross income.*—Gross income includes in general compensation for personal and professional services, business income, profits from sales of and dealings in property, interest, rent, dividends, and gains, profits, and income derived from any source whatever, unless exempt from tax

by law. (See sections 22(b) and 116.) In general, income is the gain derived from capital, from labor, or from both combined, * * *.

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